

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>7/14/2008</u>

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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FREDERICK HENDERSON,

Plaintiff,

- against -

DIANE SOMMER, M.D., Clinical Director of
FCI Otisville; BARBARA SULLIVAN, Health
Services Administrator of FCI Otisville;
JEFFREY DRUMHELLER, Associate Warden of
FCI Otisville,

Defendants.
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08 Civ. 3440 (RMB)

ORDER

Having reviewed Plaintiff's motion for a temporary restraining order and preliminary injunction, dated January 19, 2008 ("Motion"), requesting that the Court direct Defendants to "schedule and provide . . . arthroscopic surgery of[n] [P]laintiff's right knee"; Defendant's opposition, dated April 30, 2008 ("Opposition"); and Plaintiff's reply, dated June 16, 2008 ("Reply"), the Court finds and directs the following:

1) On or about February 1, 2008, Plaintiff appears to have been released from the custody of the Federal Bureau of Prisons ("BOP") and transferred to the custody of the New York State Department of Correctional Services ("DOCS"). (Defs. Opp'n, Ex. A); see also Thompson v. Choinski, 525 F.3d 205, 209 (2d Cir. 2008) ("claims challenging prison conditions during confinement in state institution were mooted by prisoner's transfer to federal penitentiary"); Salahuddin v. Goord, 467 F.3d 263, 272 (2d Cir. 2006).

2) On or about June 3, 2008, Plaintiff "received the arthroscopic surgery to repair his right knee by a surgeon contracted by the [New York State] DOCS." (Reply at 15); see also Verley v. Wright, No. 02 Civ. 1182, 2007 WL 2822199, at *1 (S.D.N.Y. Sept. 27, 2007)

(“Plaintiff’s claims for declaratory and injunctive relief are deemed moot because of his transfer from a . . . [state] [f]acility to a different facility and because he has received the treatment he initially sought.”).

Thus, Plaintiff’s Motion is moot.

Order

For the reasons stated above, Plaintiff’s Motion [#3] is denied as moot.

The parties are directed to appear for a status conference before the Court on September 2, 2008 at 11:30 a.m. in Courtroom 21D (21st floor), 500 Pearl Street, U.S. District Courthouse. Defendants are directed to make all necessary arrangements for Plaintiff to appear by phone. The parties are directed to pursue good faith settlement negotiations prior to the September 2, 2008 conference.

Dated: New York, New York
July 14, 2008

A handwritten signature in black ink, appearing to read 'RMB', is written above a horizontal line.

RICHARD M. BERMAN, U.S.D.J.